

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE PUBLIC UTILITIES COMMISSION

In the Matter of the Complaint of Level 3
Communications, LLC, Against Qwest
Corporation Regarding Compensation
for ISP-Bound Traffic

FIRST PREHEARING ORDER

This matter came on for a prehearing conference before Administrative Law Judge Kathleen D. Sheehy on July 25, 2005, at 9:30 a.m., in the Small Hearing Room of the Minnesota Public Utilities Commission (Commission).

Gregory Merz, Esq., Gray Plant Mooty, 500 IDS Center, 80 South Eighth Street, Minneapolis, MN 55402-3796, and Victoria Mandell, Esq., Level 3 Communications, Inc. (Level 3), 1025 Eldorado Boulevard, Broomfield, CO 80021, appeared for Level 3.

Jason Topp, Esq., Qwest Corporation (Qwest) Law Department, 200 South Fifth Street, Room 2200, Minneapolis, MN 55402, appeared for Qwest.

Linda S. Jensen, Assistant Attorney General, 445 Minnesota Street, Suite 900, St. Paul, Minnesota 55101, appeared on behalf of the Minnesota Department of Commerce (Department).

Kevin O'Grady appeared for the staff of the Commission.

Based on the discussions during the prehearing conference, and all of the files and proceedings, the Administrative Law Judge makes the following:

ORDER

1. The parties to this matter as named in the Commission's Notice and Order for Hearing of June 3, 2005, are Level 3, Qwest, and the Department.

2. The final date for filing Petitions to Intervene is August 10, 2005. Any persons petitioning to intervene as a party after that date may be restricted as to the scope of their participation. Petitions to Intervene must be filed with the Administrative Law Judge; the petition and any objections thereto must be served on all existing parties and the Commission.

3. Any person admitted to this proceeding as an intervenor after the date of this Order shall be bound by the terms of this Order.

4. Members of the public need not become formal parties to be considered participants in the hearing. Members of the public may offer either oral or written testimony, and they may offer exhibits for inclusion in the record. Any person desiring to become a formal party to the proceeding, however, must file a Petition to Intervene.

SCHEDULE

5. The following schedule is adopted:

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| •Direct Testimony by all parties. | August 24, 2005 |
| •Reply Testimony of Level 3 and Qwest; Direct Testimony of the Department. | September 14, 2005 |
| •Motion for filing any Motion for Summary Judgment | September 28, 2005 |
| •Response to any Motion for Summary Judgment | October 12, 2005 |
| •Evidentiary Hearing, beginning at 9:30 a.m. in the Commission Offices at 121 Seventh Place East, Suite 350, St. Paul, Minnesota. | November 3, 2005 |
| •Briefing deadlines and a date for the ALJ report will be set at the conclusion of the hearing. | |

PROCEDURE

6. The Rules of the Office of Administrative Hearings govern the conduct of the hearings, and the Professionalism Aspirations adopted by the Minnesota Supreme Court will be observed.

FILING OF DOCUMENTS

7. Prefiled testimony and exhibits may be in any reasonable format that is understandable, logically organized, and capable of being cited by page and line number, paragraph number, or similar identifier.

8. All documents filed, including prefiled testimony, **but excluding information requests and responses**, shall be filed as follows:

- a. The original shall be filed with the court reporter.
- b. One copy shall be filed with the Administrative Law Judge.

- c. One copy shall be served on the persons listed on the attached service list, in the number indicated. An electronic copy, where possible, shall also be sent by email to persons whose email address is provided on the service list. The Office of Administrative Hearings will revise the list as necessary. Service shall be made according to the most current service list provided to the parties by the Office of Administrative Hearings.
- d. Pursuant to Minn. R. 1400.5100, subp. 9, and Minn. R. 7829.0400, subp. 1, the effective date of filing shall be the date the document is mailed to the Office of Administrative Hearings or delivered to the Executive Secretary of the Commission. Filings to the Administrative Law Judge may be accomplished by email, sent to Kathleen.Sheehy@state.mn.us, or facsimile transmission, facsimile number 612-349-2665. Any filing sent by email or facsimile transmission will be followed by a hard copy.
- e. Proof of service shall be filed with each filed document or within three business days thereafter.
- f. An electronic copy of prefiled testimony shall be served on the other parties and the court reporter by 3:00 p.m. on the day it is due.

DISCOVERY

9. All requests for information shall be made in writing, or electronically followed by writing, to the person from whom the information is sought, with a copy of the request mailed to all parties of record. No such request shall be provided to the Administrative Law Judge. The party responding to the information request shall provide the information requested to the requesting party within ten calendar days after receipt of the request, unless the requesting party agrees to provide additional time. There shall be a continuing obligation to update and supplement information responses. The information need not be supplied as a matter of course to all other parties unless specifically requested by a party. Information requests or responses received after 3:00 p.m. on business days or on weekends or State holidays shall be considered as being received on the following business day, except that any U.S. Mail received during business hours shall be considered as being received on the same day.

10. In the event the information cannot be supplied within ten calendar days, the responding party shall notify the requesting party within four business days of receipt of the discovery request of the reasons for not being able to supply the information and attempt to work out a schedule of compliance with the requesting party. All disputes concerning the reasonableness of discovery requests and the timing and sufficiency of responses shall be resolved by the Administrative Law Judge upon motion of a party. Notice of such a motion should be made by email if possible and may be made be heard by telephone conference among the Administrative Law Judge and affected parties.

PREFILED TESTIMONY AND ORDER OF TESTIMONY

11. Prefiled testimony shall be marked and received as exhibits. Prefiled testimony that is amended or that is not offered into the record shall be considered withdrawn and the sponsoring witness may not be cross-examined concerning the withdrawn testimony. Except for cause shown, all substantive revisions or corrections to any prefiled testimony shall be made in writing and served upon the Administrative Law Judge and the parties by email no later than three days before the evidentiary hearing starts.

12. Unless the parties agree otherwise, the order of testimony and questioning in the evidentiary hearings shall be: Level 3 first, then Qwest, then the Department.

EXAMINATION OF WITNESSES

13. Witnesses shall be allowed ten minutes to summarize their prefiled testimony.

14. Parties shall examine and cross-examine witnesses through their attorneys, if they are represented by counsel. Any party not represented by counsel may examine and cross-examine each witness through any one representative chosen by the party.

15. Except for good cause shown, objections by any party relating to the qualifications of a witness or the admissibility of any portion of a witness's prefiled testimony shall be considered waived unless the objecting party states by motion its objection with particularity to the Administrative Law Judge and serves a copy of such objections on the Commission and all other parties **by October 28, 2005**. If an objection is made by a party, the party shall be permitted to lay further foundation for the objection through cross-examination of the witness. Any prefiled testimony that is not objected to shall be admitted during the evidentiary hearings without the necessity of laying foundation for the testimony.

Dated this 1st day of August, 2005.

s/Kathleen D. Sheehy
KATHLEEN D. SHEEHY
Administrative Law Judge